

NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MICHAEL LEE WILLIAMS,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11873
Trial Court No. 3AN-12-5684 CR

MEMORANDUM OPINION

No. 6287 — February 24, 2016

Appeal from the Superior Court, Third Judicial District,
Anchorage, Michael R. Spaan, Judge.

Appearances: Andrew Steiner, Bend, Oregon, for the Appellant.
Tamara E. de Lucia, Assistant Attorney General, Office of
Criminal Appeals, Anchorage, and Craig W. Richards, Attorney
General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Coats,
Senior Judge.*

Senior Judge COATS, writing for the Court.
Judge MANNHEIMER, concurring.

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

Michael Lee Williams was convicted of second-degree theft, first-degree forgery, and two misdemeanors.¹ These two felony charges were based on evidence that Williams attempted to take a bag containing about \$700 from a Holiday gas station and that, when he was arrested, Williams possessed counterfeit currency with the intent to fraudulently use it.

Prior to trial, Williams moved to suppress evidence of the counterfeit money found on his person. The superior court ruled that this currency was discovered during a valid search incident to arrest. On appeal, Williams contends that the superior court erred in denying his motion to suppress. For the reasons below, we uphold the superior court's ruling.

Williams also contends that there was insufficient evidence for the jury to find him guilty of first-degree forgery because the State failed to prove that he had an intent to defraud. We conclude that there was sufficient evidence to support the verdict.

Why we uphold the superior court's denial of Williams's suppression motion

At the evidentiary hearing on Williams's motion to suppress, Anchorage Police Officer Kyle Olson testified that he responded to a reported theft at a Holiday gas station in Mountain View — a report that a bag of money had been stolen from the station by a black adult male. The dispatcher indicated that it was not an emergency — because the gas station employees saw the man steal the bag of money, and those employees now had the man in their custody.

But when Officer Olson arrived at the gas station, he saw a black man (who turned out to be Williams) running out of the back of the gas station with two gas station

¹ AS 11.46.130(a)(1) and AS 11.46.500(a)(1), respectively.

employees in close pursuit. According to Olson, Williams's shirt was torn open, and he was sweating and out of breath.

Olson announced that he was a police officer, and he ordered Williams to stop. Williams immediately claimed that the gas station employees were assaulting him, but the Holiday employees told Olson that Williams was the man who had been trying to steal from the gas station.

Olson put Williams in handcuffs, and he patted Williams down for weapons. Olson did not feel any weapons, but he did feel a bulge in Williams's left front pants pocket that appeared to be a wad of currency folded in half. Olson reached into Williams's pocket and removed the object. It was, in fact, a wad of currency, but Olson testified that the money was "different than your typical U.S. currency": its color was a brighter green, and its borders were uneven.

The superior court found that, at the time Officer Olson removed the money from Williams's pocket, Olson had probable cause to arrest Williams for theft. The court noted that Olson had received a dispatch call reporting a theft, and that, when Olson arrived at the Holiday station, he observed two Holiday employees chasing Williams. Thus, the court concluded, Olson could validly arrest Williams for theft and search him incident to that arrest, because it was possible that Williams was carrying evidence of the theft.

We uphold the superior court's rulings that Olson had probable cause to arrest Williams for theft, and that Olson could properly search Williams's person (incident to that arrest) for evidence of the theft. Thus, when Olson discovered a wad of currency in Williams's pocket, he could validly seize this evidence.

On appeal, Williams raises a different argument from the one he raised in the superior court. Williams contends that Olson acted illegally when he arrested him because, under AS 12.25.030 (the Alaska statute defining a police officer's authority to

make an arrest), an officer acting without a warrant cannot arrest a person for a misdemeanor (other than driving under the influence) unless the crime was committed in the officer's presence. Williams contends that, even though Olson might have had probable cause to arrest him for theft, Olson had no reason to think that the amount of money involved was large enough to make the theft a felony. Thus, Williams concludes, his arrest was unlawful because he was arrested for a misdemeanor that did not occur in Olson's presence.

Because Williams did not raise this issue in the superior court, the issue is not preserved for appeal. And under *Duncan v. State*,² and *Moreau v. State*,³ Fourth Amendment claims such as this cannot be raised as claims of plain error — because, even if the evidence was obtained in violation of the Fourth Amendment, this does not bear on the defendant's actual guilt or innocence.

We therefore affirm the superior court's denial of Williams's suppression motion.

The evidence presented at Williams's trial was sufficient to support Williams's conviction for first-degree forgery

Williams contends that the evidence presented at his trial was legally insufficient to support his conviction for first-degree forgery. To convict Williams of this crime, the State had to prove that Williams knowingly possessed a forged instrument with the intent to defraud.⁴

² 178 P.3d 467, 472 (Alaska App. 2008).

³ 588 P.2d 275, 279-280 (Alaska 1978).

⁴ AS 11.46.500(a)(1), AS 11.46.510(a).

The State introduced evidence that Williams possessed eight counterfeit \$20 bills in his pocket at the time of his arrest. The parties stipulated that counterfeit bills similar to the ones in Williams's possession were being circulated in Anchorage during this time period. In addition, Williams made numerous false and implausible statements to the police. He gave a false name to the police, and he falsely accused the gas station employees of assaulting him. With respect to the bag that Williams was trying to remove from the gas station, Williams claimed that he thought the bag contained napkins, not money. And with respect to the counterfeit currency found in his pocket, Williams claimed that he found it lying on a counter at a laundromat, just a few minutes before he went to the Holiday gas station. In addition, Williams gave the police conflicting statements about whether he knew the \$20 bills were counterfeit.

On appeal, Williams admits that he lied to the police, but he argues that those lies did not prove that he intended to defraud anyone. Williams contends that it was reasonable to infer that he lied to the police because he thought that the mere possession of counterfeit currency was illegal. Thus, Williams argues, his lies to the police did not establish that he possessed the counterfeit currency with intent to defraud.

Williams's argument rests on viewing the evidence (and the inferences to be drawn from it) in the light most favorable to himself. But when an appellate court is asked to assess whether the evidence is sufficient to support a criminal conviction, the court must view the evidence, and the inferences to be drawn from it, in the light most favorable to the jury's verdict.⁵ The test is whether, viewing the evidence in that light,

⁵ *Ross v. State*, 586 P.2d 616, 618 (Alaska 1978); *Beck v. State*, 408 P.2d 996, 997 (Alaska 1965).

it was adequate to support a conclusion by fair-minded jurors that the government had proved its case beyond a reasonable doubt.⁶

Applying this test, we conclude that the evidence presented at Williams's trial was legally sufficient to support his conviction for first-degree forgery.

Conclusion

The judgment of the superior court is AFFIRMED.

⁶ *Beck*, 408 P.2d at 997.

Judge MANNHEIMER, concurring.

I write separately to point out that, even if Williams's plain-error claim of improper arrest were not foreclosed by our supreme court's decision in *Moreau*, his claim would be meritless — because Officer Olson did, in fact, have probable cause to believe that a criminal offense was occurring in his presence.

Olson had received a report that a man had just attempted to commit a theft at the Holiday gas station. When Olson arrived, he observed Williams running away from the gas station, with two employees in hot pursuit.

If Williams had been fleeing from the employees' attempt to arrest him, then (as a matter of law) Williams's theft or attempted theft would still be continuing — because Williams had not yet reached a place of apparent safety. See *Andrew v. State*, 237 P.3d 1027, 1047-48 (Alaska App. 2010), where this Court adopted the common-law rule that thefts continue until the perpetrator reaches a place of seeming safety. Thus, even if Williams's theft offense was only a misdemeanor, it was occurring in Olson's presence.

If, on the other hand, the Holiday employees had already arrested Williams, and Williams was escaping from their custody, the theft might have been over, but Olson would still be observing an offense occurring in his presence. Even if Williams's underlying theft was only a misdemeanor, his act of running away from the gas station employees following his arrest would constitute the crime of fourth-degree escape under AS 11.56.330(a)(1).